Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1487

UNITED STATES OF AMERICA,
Petitioner,

v.

COLIN F. MACCOLLOM

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED MAY 27, 1975
CERTIORARI GRANTED OCTOBER 6, 1975

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1487

UNITED STATES OF AMERICA,

Petitioner,

v.

COLIN F. MACCOLLOM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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[1] The opinion, order denying rehearing, and judgment of the court of appeals and the district court order of dismissal are reproduced in the appendix to the petition for a writ of certiorari.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Criminal No. 51287

UNITED STATES OF AMERICA

v.

COLIN FERGUS MACCOLLOM

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1967	
Sept. 12	Filed Indictment
	* * *
1970	
June 3	ENT. RECORD OF TRIAL BY JURY (2nd day).
"	Filed Verdict of Guilty as charged.
"	SENTENCE: TEN (10) YEARS—Imprisonment. Remanded
	* * *
Sept. 18	Filed Defendant's Motion to Reduce Sentence.
"	Filed Defendant's Notice of Hearing Motion to Reduce Sentence, set September 25, 1970, 9:30 a.m.
	* * *
Sept. 25	Filed and ent. Order Modifying Sentence to ten years imprisonment under 18: 4208(a) (2). Filed Court Reporter's Transcript of hearing 9-25-70.

DATE	PROCEEDINGS
1971	
July 6	Filed letter from defendant as modification of sentence. Filed and ent. Order denying petition for modification of sentence.
1972	
Mar. 17	Filed Statement
"	Filed Motion for Transcript IFP.
"	Filed Motion to Proceed IFP.
"	Filed Affidavit of Poverty.
"	Filed Notice of Motion for April 14th at 9:30 a.m.
"	Filed Memorandum in support of Motion requesting Transcript.
Apr. 10	Filed Memorandum in Opposition to petitioner's request for a free transcript.
May 1	Filed memorandum in reply to respondent's opposition memorandum.
May 4	Ent. order continuing above motion to 5/19/72 at 9:30 a.m.
May 5	Ent. order striking hearing for lack of jurisdiction.

* * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Civil No. 422-72C2

COLIN F. MACCOLLOM

v.

UNITED STATES OF AMERICA

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1972	
6/23	Filed Motion to proceed in forma pauperis and entd. Order Granting motion to proceed.
"	Filed Motion requesting appointment of counsel.
"	Filed Complaint for declaratory Judgment and Injunctive relief.
"	Filed Memorandum in support of complaint.
6/29	Issued Summons.
"	Entd. Order appointing John Darrah to represent plaintiff.
7/7	Filed Marshals return on US.
Dec 13	Filed Defendant's motion to dismiss.
"	Filed Memorandum in support of motion to dismiss.
"	Filed notice of motion; Jan. 5, 73 at 9:30.

DATE	PROCEEDINGS
1973	
Jan 5	Ent order cont defts motion to dismiss; Jan. 12, 73.
Jan 12	Filed Memorandum in reply to respondent's motion to dismiss.
"	Filed and ent Order of Dismissal.
Mar 1	Filed plaintiff's motion for extension of time to file appeal.
"	Filed notice of motion: March 16, 73 at 9:30.
Mar 12	Filed Petitioners' notice of appeal.
"	Handed copy to U.S. Attorney.
Mar 16	Ent order Granting plaintiff's motion for extension of time to file notice of appeal.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 73-1659

COLIN F. MACCOLLOM, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1973	
Apr. 12	Docketed cause & entered appearances of counsel.
1974	* * *
May 8	Argued & submitted to: Hu, G, CJJ; Taylor, DJ
Aug. 2	Ordered opinion (Goodwin), Taylor dissenting, filed & Judg. to be filed & entd.
Aug. 2	Filed opinion—Reversed and remanded
Aug. 2	Filed & entd. judgment
	* * *
Sep. 11	Filed original & 15 copies Aples petition for rehearing and suggestion for rehearing en banc. (To all active judges)
1975	
Feb. 26	Filed order (Hu, G. Taylor)—the petition for rehearing is denied, and the suggestion for rehearing en banc is rejected. The mandate will issue forthwith. Judge Goodwin dissenting opinion.
Feb. 27	Issued Judgment.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No.

COLIN F. MACCOLLOM, PETITIONER

vs.

UNITED STATES, RESPONDENT

MOTION FOR TRANSCRIPT
IN FORMA PAUPERIS

1. This is a motion for transcripts in *forma pauperis* pursuant to 28 U.S.C. §§ 1915, 753(b).

2. Movant requests that he be furnished a full transcript of his criminal trial held in this Court on June 4, 1970.

3. Because of movant's indigency, he requests that the transcript be furnished at government expense. A motion to proceed *in forma pauperis* and supporting affidavit are filed herewith.

4. Movant intends to move this Court for vacation of his sentence pursuant to 28 U.S.C. § 2255.

5. Movant in good faith believes that the transcript will show that:

a. Movant was not afforded effective assistance of counsel as required by the Sixth Amendment to the United States Constitution.

b. There was insufficient evidence to support the judgment of guilty, which deprived movant of his right to a fair trial guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution.

6. Movant believes that the full transcript of trial is needed in order to prepare and present his constitutional contentions. Movant's memory and trial notes are inadequate.

7. Movant is unable to borrow a copy of the transcript he requests.

8. Without a copy of the transcript, movant is unable to frame his arguments for fair and effective review.

WHEREFORE, petitioner moves this court to order the United States to furnish petitioner with a full transcript of his trial.

/s/ Colin F. MacCollom
COLIN F. MACCOLLOM
Petitioner
P.O.B. 1000
Leavenworth, Kansas 66048

SUBSCRIBED AND SWORN to before me this 13th day of March, 1972.

/s/ J. J. O'Connor
Notary Public

"Authorized by the act of July 7, 1955
to administer oaths (18 U.S.C. 4004)."

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No.

COLIN F. MACCOLLOM, PETITIONER

vs.

UNITED STATES, RESPONDENT

MOTION TO PROCEED IN FORMA PAUPERIS

Comes the petitioner, COLIN F. MACCOLLOM, and moves this court pursuant to 28 U.S.C. Section 1915 for permission to proceed *in forma pauperis* in filing the attached motion for transcript. An affidavit in support of this motion is attached hereto.

/s/ Colin F. MacCollom
COLIN F. MACCOLLOM
P.O.B. 1000
Leavenworth, Kansas, 66048

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No.

COLIN F. MACCOLLOM, PETITIONER

vs.

UNITED STATES, RESPONDENT

AFFIDAVIT OF POVERTY

I, Colin F. MacCollom, being first duly sworn according to law, state in support of my attached MOTION TO PROCEED IN FORMA PAUPERIS:

1. I am the petitioner in the above-entitled case;
2. I am unable, because of my poverty, to pay the costs of this case;
3. I am unable to give security for it;
4. I believe in good faith that I am entitled to the relief I am seeking;
5. I request counsel to be appointed because of my poverty.

/s/ Colin F. MacCollom
COLIN F. MACCOLLOM
P.O.B. 1000
Leavenworth, Kansas 66048

SWORN TO BEFORE ME THIS
23rd day of Feb., 1972.

/s/ J. J. O'Connor
Notary Public

"Authorized by the act of July 7, 1955
to administer oaths (18 U.S.C. 4004)."

May 5, 1972

Mr. Colin F. MacCollom 33998
P.O. Box 1000
Leavenworth, Kansas 66048

Re: Motion for Transcript in Forma Pauperis, placed in the file jacket of cause 51287

Dear Mr. MacCollom:

The court has directed me to write you regarding your "Motion for Transcript in Forma Pauperis, which you previously were informed was set for hearing on May 19, 1972.

The court feels that the judgment in Cause 51287 completely closes that case. The proper remedy for you to persue at this time is set out in 28 U.S.C. § 2255.

This court's rules require that motions under 28 U.S.C. § 2255 must be presented on forms supplied by the clerk. Such forms have been sent to you.

In your motion for transcript, you specifically state that you are not filing a 2255 motion at this time. I have been directed to inform you that until such a motion is filed, the court has no power to act on your request for a transcript.

Sincerely yours,

CHARLES A. SCHAAF, Clerk

cc: U.S. Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No. 422-72C2

COLIN F. MACCOLLOM, PETITIONER

v.

UNITED STATES, RESPONDENT

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

1. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 1391(e), vesting the several district courts of the United States with jurisdiction to declare the rights and other legal relations of any interested party seeking such declaration in a civil action in which the United States is respondent and the cause of action arose in the district where the action is brought. This action is for the purpose of determining a question of actual controversy between the parties, as hereinafter more fully appears, and for the purpose of obtaining injunctive relief from irreparable injury suffered by petitioner as a result of respondent's inaction.

2. Petitioner here, COLIN F. MACCOLLOM, was defendant in a criminal trial, docket number 51287, held in this Court on June 4, 1970. He was convicted of violating 18 U.S.C. § 472, passing forged currency, and was sentenced to serve ten years in prison. No appeal was taken.

3. Petitioner now intends to move this Court for vacation of his sentence pursuant to 28 U.S.C. § 2255.

4. Because of his poverty, petitioner is unable to purchase a copy of the transcript of the aforementioned criminal trial.

5. Petitioner in good faith believes the transcript will show that:

a. Petitioner was not afforded effective assistance of counsel as required by the Sixth Amendment to the United States Constitution.
b. There was insufficient evidence to support the verdict of guilty, which deprived petitioner of his right to a fair trial guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution.

6. Petitioner believes that the full, verbatim transcript of trial is needed in order to prepare and present his constitutional contentions. Petitioner's memory and trial notes are inadequate.

7. Petitioner is unable to borrow a copy of the verbatim transcript.

8. Without a verbatim transcript, petitioner is unable to frame his arguments for fair and effective review.

9. Accordingly, at present, petitioner is deprived of fair and effective use of the post-conviction motion (§ 2255) procedure solely because he cannot pay for a verbatim transcript of trial. Such deprivation is fundamentally unfair and a violation of the DUE PROCESS CLAUSE of the FIFTH AMENDMENT.

10. Because affluent federal prisoners may take full advantage of the post-conviction motion procedure by purchasing a verbatim transcript, and because petitioner, because of his poverty, is not able to make such a purchase, petitioner is denied equal protection of the law. Such invidious discrimination, based solely upon a government-imposed classification according to wealth, is in violation of the DUE PROCESS CLAUSE of the FIFTH AMENDMENT.

11. In the alternative, petitioner has a statutory right to a verbatim transcript, furnished at government expense, pursuant to 28 U.S.C.A. §§ 753(b) and 1915(b).

WHEREFORE, petitioner demands that the Court, without hearing, adjudge:

1. That petitioner has an absolute constitutional right to a verbatim transcript of his criminal trial, supplied at government expense, to aid him in preparing a motion to vacate sentence.

2. In the alternative, that petitioner has a statutory right to a verbatim transcript.

3. That respondent is ordered to purchase a verbatim transcript to be supplied to petitioner.

4. That petitioner be given all such other, further and different relief as the Court may deem just.

If the Court considers a hearing necessary, petitioner requests that one be had and that counsel be appointed to assist and represent petitioner. An appropriate motion is attached.

I, COLIN F. MACCOLLOM, of lawful age, being first duly sworn, state that I have read the above and foregoing complaint and know the contents thereof; that the statements made therein are true and correct.

/s/ Colin F. MacCollom
COLIN F. MACCOLLOM
#33998
Petitioner
P.O.B. 1000
Leavenworth, Kansas 66048

SUBSCRIBED AND SWORN TO BEFORE ME THIS 13 day of June, 1972.

/s/ G. R. Galey
Notary Public

"Authorized by the act of July 7, 1955 to administer oaths (18 U.S.C. 4004)."

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No.

COLIN F. MACCOLLOM, PETITIONER

vs.

UNITED STATES, RESPONDENT

MOTION TO PROCEED IN FORMA PAUPERIS

Comes the petitioner, COLIN F. MACCOLLOM, and moves this court pursuant to 28 U.S.C. Section 1915 for permission to proceed *in forma pauperis* in filing the attached complaint for declaratory judgment and injunctive relief. An affidavit in support of this motion is attached hereto.

/s/ Colin F. MacCollom
COLIN F. MACCOLLOM
#33998
Petitioner
P.O.B. 1000
Leavenworth, Kansas 66048

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No.

COLIN F. MACCOLLOM, PETITIONER

vs.

UNITED STATES, RESPONDENT

MOTION REQUESTING APPOINTMENT OF COUNSEL

Comes the petitioner, COLIN F. MACCOLLOM, and moves this Court pursuant to 28 U.S.C. Section 1915 for appointment of counsel to assist and represent petitioner in this action for declaratory judgment and injunctive relief. An affidavit in support of this motion is attached hereto.

/s/ Colin F. MacCollom
COLIN F. MACCOLLOM
33998
Petitioner
P.O.B. 1000
Leavenworth, Kansas 66048

STAN PITKIN
United States Attorney

IRWIN H. SCHWARTZ
Assistant U. S. Attorney

1012 U. S. Courthouse
Seattle, Washington 98104

(206) 442-7970

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. 422-72C2

COLIN F. MACCOLLOM, PETITIONER

v.

UNITED STATES OF AMERICA, DEFENDANT

MOTION TO DISMISS

COMES NOW the defendant UNITED STATES OF AMERICA, through its attorney Irwin H. Schwartz, and moves the court to dismiss the complaint in the above entitled matter for failure to state a claim upon which relief can be granted.

DATED this 14th day of December, 1972.

STAN PITKIN
United States Attorney

/s/ Irwin H. Schwartz
IRWIN H. SCHWARTZ
Assistant U. S. Attorney

SUPREME COURT OF THE UNITED STATES

No. 74-1487

UNITED STATES, PETITIONER

v.

COLIN F. MACCOLLOM

ORDER ALLOWING CERTIORARI, Filed October 6, 1975

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

Mr. Justice Douglas took no part in the consideration or decision of this petition.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 596869 108